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**IN THE SUPREME COURT
STATE OF ARIZONA**

PETITION TO AMEND RULE 19, 30,
45, 47 and 104 ARIZONA RULES OF
PROCEDURE FOR THE JUVENILE
COURT

Supreme Court No. R-16-0025

**Comment in Response to Dave Beyers'
Request to Amend Rules 19, 30, 45, 47
and 104**

Pursuant to Rule 28, Arizona Rules of the Supreme Court, Christina Phillis submits this Comment regarding the Petition to Amend Rules 19, 30, 45, 47, and 104 of the Arizona Rules of Procedure for Juvenile Court, filed by Dave Byers, R-16-0025. Ms. Phillis is an attorney who practices in Superior Court, Juvenile Division.

The only proposed amendments addressed in this comment are proposed amendments to Rule 30 and Rule 45 of the Arizona Rules of Procedure for Juvenile Court. The proposed amendments to Rules 30 and 45 submitted by Dave Byers should be denied for the reasons provided below.

Proposed Amendments to Rule 30

The purpose of juvenile-delinquency dispositions is treatment and rehabilitation. Information relevant to treatment and rehabilitation is sensitive. Thus, the contents of the social file must remain confidential and not accessible to the public. The social file contains information on the child's family, school performance, and social issues, as well as psychological evaluations, psychiatric evaluations, and counseling reports. Clearly, this information is very sensitive and should not be available to the public.

Proposed Rule 30(A)(1)(f) is concerning. The proposed amendment would permit "identifying the information as confidential unless the social file information is presented as a separate document that can be segregated from the Disposition Report." The Disposition Report should be confidential. The information contained in the Disposition Report is a summary (which may contain direct quotations) of the confidential information contained in the social file. Placing the confidential information in a Disposition Report does not change the sensitive nature of the information. All information in the social file must remain confidential. If the information is placed in a report authored by a probation officer (the possessor of the social file), the report then must be confidential. To require otherwise would make the confidentiality of the social file meaningless.

Proposed Amendments to Rule 45

The ability to parent one's children is a fundamental right, which we as Americans and Arizonans enjoy. *Santosky v. Kramer*, 455 U.S. 745, 747-48 (1982); *Maricopa County Juv. Action No. JS-6520*, 157 Ariz. 238, 241, 756 P.2d 335, 338 (App. 1988). Before the State is permitted to interfere with one's fundamental right to parent, parents are entitled to due process. *Maricopa County Juv. Action No. JS-4942*, 142 Ariz. 240, 242, 689 P.2d 183, 185 (App. 1984). Pursuant to the Sixth Amendment to the United States Constitution and Article 2, Sections 4 and 24 of the Arizona Constitution, due process requires a fair and impartial hearing. A fair and impartial hearing occurs when the parents and the Department of Child Safety (DCS) have timely access to the same information. *See, e.g.*, Rule 44(C)(1), Rules of Procedure for Juvenile Court; *see also* A.R.S. § 8-807(C). DCS has the right to make allegations and parents have the due process right to protect themselves against the allegations.

The proposed amendment to Rule 45(C) offends due process. The proposed amendment to Rule 45(C)(3) would permit the court to set alternative dates for disclosure of DCS case workers' reports. At present, such disclosure is due one day prior to a Preliminary Protective Hearing and fifteen days prior to a Report and Review Hearing. Rule 58, Arizona Rules of Procedure for Juvenile Court.

Due process requires that parties be given adequate time to prepare their case against allegations that impact their constitutional right to parent their children. Rule 45, Rules of Procedure for Juvenile Court, was created to ensure that all parties would have timely access to all information prior to Report and Review hearings that could impact a parent's ability to care for their children. The first opportunity for a parent to contest the removal of their child is the Preliminary Protective Hearing, A.R.S. § 8-824. At the Preliminary Protective Hearing, a parent may request a Temporary Custody Hearing. A.R.S. § 8-825. The Preliminary Protective Hearing occurs a minimum of five (5), days but not more than seven (7) days, after removal of the child.

Prior to the filing of the dependency petition, DCS will have conducted an investigation and held a Team Decision Meeting (TDM). At the TDM, DCS will have obtained additional information. Thus, at the time of the filing of the dependency petition, DCS already has obtained documents upon which to base its allegations. Disclosing the information within twenty-four hours of the Preliminary Protective Hearing (five days after removal of the child from the home and family) is not a hardship. The documentation is the "probable cause" for the removal of the child. Without the disclosure provided to the parent, the parent is disadvantaged at the evidentiary hearing to contest the removal of their child. The

court should not be permitted to allow disclosure of the court report fewer than 24 hours before the preliminary protective hearing.

A parent's ability to contest the need for out-of-home care continues throughout the case. At each periodic Report and Review Hearing, the court has the ability to order the child home and the petition dismissed. In order for parents to argue for the return of their children, the parents need documents that support their positions or refute DCS's objection. Fifteen days is the minimum length of time parents' attorneys need to review the DCS report, investigate assertions made in the report, and be prepared to refute the assertions. Allowing the court to set a shorter timeline for disclosing the report offends due process.

Currently, in Maricopa County, some juvenile court judges have informed DCS that the court report is due five days before the Report and Review hearing. Five days may be sufficient time for the court to read the report, but it is not sufficient time for parents to investigate and prepare for the hearing. Under the current Rule 58 (entitled Review Hearings) counsel for the parent is entitled to the report no less than fifteen days before the hearing, regardless of the deadline that the court sets for the delivery of the court's copy of the report. To allow a short time frame for disclosure of the court report would deny parents due process and cause children to linger unnecessarily in the system.

Proposed Rule 45 allows the court report to be submitted as evidence at an evidentiary hearing, so long as the author of the report is available for cross-examination. However, a parent cannot conduct a meaningful cross-examination of the author unless the report is disclosed far enough in advance to enable the attorney to prepare. The proposed rule change does not take into account the needs of parents' and children's attorneys to adequately prepare for hearings. Parents' due process rights trump the convenience of the court and DCS.

Further, Rule 45(C)(2), Arizona Rules of Procedure for Juvenile Court, should be amended to fifteen days to be consistent with Rule 58(C), Arizona Rules of Procedure for Juvenile Court. Rule 45(C)(2) and Rule 58(C) dictate the time line for submittal of a court report by the petitioner to the court. Rule 45(C)(2) requires the report to be submitted ten days in advance of a hearing, but Rule 58(C) requires the report to be submitted fifteen days prior to a hearing. Clearly, the two rules are inconsistent.

Rule 58 specifically addresses Report and Review hearings, while Rule 45 governs admissibility of evidence. Thus, Rule 58 should trump Rule 45: Rule 58 was written specifically to outline the procedures for Report and Review hearings. The purpose of Rule 45 is to outline the admissibility of court reports. Not all court reports are offered into evidence. However, all Report and Review hearings must have a court report submitted, even if it is not going to be offered into

evidence. Rule 45(C)(2) should be amended to fifteen days to be consistent with Rule 58(C), Arizona Rules of Procedure for Juvenile Court.

Conclusion

A Disposition Report authored by a juvenile probation officer always should be confidential, along with any attached documents. The proposed amendment to Rule 30(A)(1) is not necessary, creates confusion, and is contrary to the rehabilitative aim of juvenile-delinquency disposition proceedings.

Rule 45(C) should be amended only to provide for consistent disclosure requirements for Court Reports. Rule 45(C)(2) should be amended to “fifteen” days, the same time period required by Rule 58(C), Arizona Rules of Procedure for Juvenile Court. To permit shortening of disclosure deadlines offends due process.

RESPECTFULLY SUBMITTED this 1st day of March, 2016.

/s/ Christina Phillis

Christina Phillis

Electronic copy filed with the Clerk of
the Supreme Court of Arizona this 1st
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by: Christina Phillis